

2. Ms. Andes contends that she injured her right knee when she slipped and fell while working for Kan Pak, LLC, on January 30, 1999. The company and its insurance carrier do not contest that Ms. Andes slipped and fell but they do contest that she sustained any injury in that fall as she did not seek medical treatment until her knee gave way on February 25, 1999.

3. The outcome of this case hinges upon Ms. Andes' credibility. She testified that she had ongoing symptoms between the date of the initial accident and the date of her knee giving way. She also testified that before her knee gave way she was reluctant to request medical treatment from Kan Pak as she was a new employee and was afraid that she would lose her job.

4. The Judge had the opportunity to observe the various witnesses that testified at the three hearings that have been held in this claim and has found Ms. Andes' testimony convincing despite testimony from others to the contrary. In this instance, the Appeals Board gives some deference to the Judge's impressions of the witnesses' credibility. Therefore, the Appeals Board affirms the Judge's finding that Ms. Andes sustained personal injury by accident arising out of and in the course of her employment with Kan Pak, LLC.

5. Kan Pak and its insurance carrier contend that Ms. Andes failed to prove that she was temporarily and totally disabled and, therefore, the Judge exceeded her jurisdiction by ordering the payment of temporary total disability benefits. Because of the limits placed upon the Appeals Board's jurisdiction to review preliminary hearing findings, that issue is not reviewable at this juncture of the proceeding.

6. This is an appeal from a preliminary hearing order. The Appeals Board's jurisdiction to review preliminary hearing findings is limited. The following findings from a preliminary hearing order are expressly subject to review and are deemed jurisdictional.¹

- I. Did the worker sustain an accidental injury?
- II. Did the injury arise out of and in the course of employment?
- III. Did the worker provide timely notice and timely written claim?
- IV. Is there any defense to the compensability of the claim?

¹ K.S.A. 1998 Supp. 44-534a.

Also, the Appeals Board may review those preliminary hearing orders where the Judge has exceeded his or her jurisdiction.²

7. The administrative law judges have the jurisdiction at preliminary hearings to determine whether a worker meets the definition of being temporarily and totally disabled. That question is not a jurisdictional issue that the Appeals Board can review from a preliminary hearing.

8. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the July 29, 1999 preliminary hearing Order entered by Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Richard J. Liby, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

² K.S.A. 1998 Supp. 44-551.

³ K.S.A. 1998 Supp. 44-534a(a)(2).